

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the  
Application of Roseanna Strother for a  
License to Provide Child Foster Care

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on November 22, 2005, at the Office of Administrative Hearings, 100 Washington Avenue S., Suite 1700, Minneapolis, Minnesota. The hearing record closed at the conclusion of the hearing.

Mary M. Lynch, Assistant County Attorney, 525 Portland Avenue, 12<sup>th</sup> Floor, Minneapolis, MN 55415, appeared on behalf of the Hennepin County Human Services Department and the Department of Human Services.

The Applicant, Roseanna Strother, 1345 Morgan Avenue North, Minneapolis, MN 55411, appeared on her own behalf without counsel.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **STATEMENT OF ISSUE**

Did the Department properly conclude that the Applicant failed to ensure that a household member submitted fingerprints as part of the background study, failed to disclose the presence of an additional household member, and failed to initiate a background study for that individual, and that, in order to protect the health and safety of children receiving services, she should not be issued a license to provide child foster care?

The Administrative Law Judge concludes that the Applicant's brother-in-law was not, in fact, living in the household, the person the Department and County believed was living in the household did not, in fact, live there, so the Applicant did not fail to disclose the presence of an additional household member. While the Applicant's husband did not submit fingerprints in connection with his background study, the lapse should be excused because he was traveling out of state for several months, and he later became ill and is now deceased. Accordingly, it is recommended that the Department of Human Services grant the license application.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. The Applicant, Roseanna Strother, was issued an Emergency Relative Foster Care License on December 16, 2004, to care for a 4-year-old child and 2-year-old twins. An emergency license remains in effect for 120 days.<sup>1</sup>

2. As is customary, the Applicant promptly filed an application for a regular foster care license.<sup>2</sup> On the Applicant's child foster care application dated December 16, 2004, she listed herself, her husband (Percy Strother, Sr.), and her daughter (T.H.) as members of the household.<sup>3</sup>

3. As part of the licensing process, a background study is conducted on household members who are 13 years of age and over. The Bureau of Criminal Apprehension background study check performed with respect to Percy Strother, Sr., showed that his offender status was "not determined."<sup>4</sup> In such instances, or if the BCA check shows an older offense history or offenses in multiple states, the County obtains the individual's fingerprints in order to positively identify whether the individual was involved.<sup>5</sup>

4. The offenses disclosed in connection with Percy Strother, Sr.'s background study involved unlawful possession with intent to sell a Schedule II narcotic,

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<sup>1</sup> Testimony of Roseanna Strother, Mary Finstad.

<sup>2</sup> Ex. 2; Testimony of M. Finstad.

<sup>3</sup> Testimony of M. Finstad; see Minn. Stat. § 245C.03.

<sup>4</sup> Ex. 4.

<sup>5</sup> Testimony of M. Finstad.

which would constitute a disqualification but not necessarily a bar to licensure. The County did not pursue the disqualification or use it as a basis for the denial of the foster care license application.<sup>6</sup>

5. By letter dated December 29, 2004, Percy Strother, Sr., was notified that he was required to complete a fingerprint card and submit it to the agency as part of his background study. He was asked to go to any police department and get fingerprinted, and submit the completed fingerprint card within 15 calendar days.<sup>7</sup>

6. The County did not receive any response to the request for fingerprints from the Applicant or Percy Strother, Sr. No fingerprints were ever submitted to the County.<sup>8</sup>

7. Percy Strother, Sr., who was a musician, went on the road to perform shortly after the children were placed with the Applicant and did not return until April 2005. He was very ill by that time. He was diagnosed with liver cancer and passed away on May 29, 2005.<sup>9</sup>

8. On or about March 4, 2005, the County's Child Protection Screening unit received a report that Percy Strother, Jr., the adult son of the Applicant, lived in the Applicant's household, and that two of the foster children reported to their birth mother during a supervised visit that they were afraid of their uncle Percy because he "whooped" them.<sup>10</sup> The report did not meet the County's criteria for full investigation by the child protection division, but the County's foster care licensing division was notified of the allegation. The County foster care division conducted a records review investigation but found the records to be inconclusive. Ultimately, the County was unable to determine whether Percy Strother, Jr., actually lived in the Applicant's home.<sup>11</sup>

9. Percy Strother, Jr., did not live in the Applicant's household, but did visit at times. There is no evidence that he ever took care of the foster children, and no evidence that he ever committed maltreatment of the Applicant's foster children or of any other children.<sup>12</sup>

10. During the investigation relating to Percy Strother, Jr., the County found out that Frank Strother, the Applicant's brother-in-law, had identified the Applicant's home as his home address on police reports.<sup>13</sup> Frank Strother is a registered sex offender. His probation officer informed the County on March 4, 2005, that she believed that Frank had lived at the Applicant's address since 2003.<sup>14</sup>

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<sup>6</sup> Ex. 1; Testimony of M. Finstad.

<sup>7</sup> Ex. 5; Testimony of M. Finstad.

<sup>8</sup> Testimony of M. Finstad.

<sup>9</sup> Testimony of R. Strother; Ex. 16.

<sup>10</sup> Exs. 6, 8.

<sup>11</sup> Exs. 1, 8, 9; Testimony of M. Finstad.

<sup>12</sup> Testimony of R. Strother, A. Higgins.

<sup>13</sup> Exs. 1, 8, 9, 13; Testimony of M. Finstad.

<sup>14</sup> Ex. 10; Testimony of M. Finstad.

11. The County removed the foster children from the Applicant's home on or about March 4, 2005.<sup>15</sup>

12. On March 10, and March 15, 2005, Frank Strother's probation officer informed the County by e-mail that Frank was reporting that he had moved to an address on First Avenue South and that she had visited him at that address.<sup>16</sup>

13. County staff never observed Frank Strother living in the Applicant's home.<sup>17</sup>

14. Frank Strother did not, in fact, ever live in the Applicant's home. The Applicant found out later that her husband, Percy Strother, Sr., had given Frank Strother (his brother) permission to use their address as a mailing address because he was living in a low income building with another brother and there were restrictions on the number of people allowed to live there.<sup>18</sup>

15. By letter dated May 26, 2005, the County recommended that the Department deny the Applicant's application for a child foster care license, based on allegations that the Applicant failed to disclose changes in household conditions, failed to secure the County's approval of adult roomers or boarders, knowingly withheld relevant information, and failed to cooperate with the background study requiring fingerprints of her spouse.<sup>19</sup>

16. By letter dated August 18, 2005, the Applicant was notified that the Commissioner of Human Services was denying her application to provide child foster care, based upon the recommendation of Hennepin County.<sup>20</sup> At the request of the County, the Order of Denial was amended on September 1, 2005, to make it clear that it was alleged that the Applicant had failed to disclose only one household member (Frank Strother), not two. Thus, the stated grounds for denial of the license application were that the Applicant knowingly withheld relevant information when she failed to disclose the presence of a household member, the Applicant failed to initiate a background study for that household member, and the Applicant's husband failed to submit fingerprints. The Department asserted that denial of the application was necessary to protect the health and safety of children receiving services.<sup>21</sup>

17. On September 1, 2005, the Department of Human Services issued the Notice of and Order for Hearing in this matter, setting the matter on for hearing on November 22, 2005. The Notice of and Order for Hearing was served by mail on the Applicant on October 12, 2005.

18. A Protective Order was entered in this matter on November 22, 2005.

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<sup>15</sup> Ex. 9; Testimony of M. Finstad.

<sup>16</sup> Exs. 11, 12.

<sup>17</sup> Testimony of M. Finstad.

<sup>18</sup> Testimony of Roseanna Strother, Anita Higgins.

<sup>19</sup> Ex. 1; Testimony of M. Finstad.

<sup>20</sup> Ex. 14.

<sup>21</sup> Ex. 15; Testimony of M. Finstad.

19. At the start of the hearing, the parties waived the requirement set forth in Minn. Stat. § 245A.08, subd. 4, requiring service of the Administrative Law Judge's report by certified mail, and agreed that first class U.S. mail was acceptable.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Hennepin County have complied with all procedural requirements of law and rule.

4. Minn. Stat. § 245A.05 states, "The commissioner may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation." Minnesota Rules part 2960.3020, subpart 11(D), similarly states that the Commissioner "shall deny a license if the applicant fails to fully comply with laws or rules governing the program or fails to cooperate with a placing or licensing agency."

5. At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the applicant has complied fully with Minn. Stat. Chapter 245A and other applicable laws or rules and that the application should be approved and a license granted.<sup>22</sup>

6. Minn. Stat. § 245A.04, subd. 6, states that the Commissioner shall "consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant" before granting or denying a license, and shall "evaluate the results of the [background] study . . . and determine whether a risk of harm to the persons served by the program exists."

7. Minn. Stat. § 245C.05, subd. 5, states that, if the Commissioner has reasonable cause to believe that further pertinent information may exist on the subject of the background study, the subject "shall provide the commissioner with a set of classifiable fingerprints obtained from an authorized law enforcement agency." Under

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<sup>22</sup> Minn. Stat. § 245A.08, subd. 3(b).

the statute, the Commissioner is deemed to have reasonable cause if information obtained from the BCA indicates that multistate offender status is undetermined.

8. Minn. Rules part 2960.3020, subp. 7, states that license holders "must immediately notify the licensing agency of . . . household member changes that affect the terms of the license or the ability of the license holder to provide care to children." Subpart 8 of the same rule specifies that license holders must not have adult roomers or boarders in the foster home without the licensing agency's approval, and indicates that roomers or boarders are subject to background studies.

9. Minn. Rules part 2960.3060, subpart 4, states that applicants "must demonstrate the ability to . . . work within agency and state policies."

10. The Applicant did not knowingly withhold relevant information or give false or misleading information in her application for child care licensure within the meaning of Minn. Stat. § 245A.05. Because the Applicant's brother-in-law, Frank Strother, did not actually live in her household, the Applicant accurately and completely disclosed the identities of individuals residing in her home who were subject to background studies. Although the Applicant's husband did not promptly return fingerprints to the County in connection with his background check, this failure should be excused because he was out of state for several months shortly after the request was made, and he thereafter became ill and died.

11. The Applicant has demonstrated by a preponderance of the evidence that she has complied fully with the applicable laws and rules or that any violations that may have occurred should be excused, and that the application should be approved and a license granted.

12. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is hereby incorporated by reference in these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: That the Order denying the application of Roseanna Strother for a license to provide child foster care be reversed and the application be GRANTED.

Dated: December 21, 2005.

s/Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Taped (one tape)

## **MEMORANDUM**

At the time the County made its recommendation to deny the Applicant's foster care license application and the Department of Human Services issued the Order of Denial, they were not aware of her husband's prolonged absence from the household, his illness due to cancer, or his death. The Applicant's husband's failure to return his fingerprints is understandable given his absence and illness, and the Applicant's failure to ensure that the fingerprints were returned is also understandable given her role in caring for her husband during his final months. The Administrative Law Judge recommends that the technical violation of the statute and rule that may have occurred be excused under these circumstances.

The discovery of the fact that Frank Strother, a registered sex offender, was giving police officers and his probation officer the Applicant's address as his home address understandably caused concern and resulted in County personnel immediately removing the foster children from the Applicant's home. However, the Applicant and her daughter provided credible testimony that Frank did not, in fact, live in the Applicant's home. Rather, the Applicant's husband gave his brother Frank permission to use their address because there were restrictions on the number of people who were permitted to reside in the low income housing Frank actually shared with another brother. Frank's probation officer informed the County by e-mail dated March 15, 2005, that she met with Frank at an address on First Avenue South. The County and Department did not refute the testimony of the Applicant and her daughter, or provide any other evidence that Frank lived at the Applicant's home in the past or continues to live there. On balance, the Applicant has adequately demonstrated compliance with applicable laws and rules relating to the disclosure of household members.

The Administrative Law Judge concludes that the Applicant has demonstrated by a preponderance of the evidence that she has complied fully with the applicable laws and rules or that any violations that may have occurred should be excused. Accordingly, the Administrative Law Judge recommends that the application be approved and a license be granted.

**BLN**